

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT KURT SCHERER,
Plaintiff,

No. Civ. S-04-0109 DFL GGH

Memorandum of Opinion
and Order

v.

HOME DEPOT U.S.A., INC.,
KRAUSE, INC., AND DOES 1-100,
Defendants. /

Prevailing defendants Home Depot and Krause have submitted bills of costs following their successful defense of this action before a jury. "[C]osts other than attorneys' fees shall be allowed as of course to the prevailing party." Fed. R. Civ. P. 54(d)(1). Local Rule 54-292(b) provides that a bill of costs "shall itemize the costs claimed and shall be supported by a memorandum of costs and an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred." Prevailing defendants Krause and Home Depot request costs of \$22,621.01 and \$14,449.75, respectively,

1 and they have filed the required memoranda and declarations.
2 Given the length of trial and the nature of the issues, the
3 total costs claimed are quite modest.
4

5 Plaintiff makes no argument that defendants are not
6 generally entitled to recover their costs, but he objects to the
7 reasonableness or appropriateness of some of the cost items
8 detailed in defendants' supporting declarations. Plaintiff
9 cites no legal authority to support any of his objections.
10

11 A. Objections to Krause's Costs

12 *Copying Charges:*

13 Plaintiff objects to photocopying charges because "he is
14 unable to determine whether these costs were necessary to the
15 defense of the case." A prevailing party may recover necessary
16 copying costs. 28 U.S.C. § 1920(4); LR 54-292(f)(5). Krause's
17 attorney, Ron Haven, has submitted a declaration setting out the
18 various copying charges incurred and avering that "each cost . .
19 . has been necessarily incurred in this matter and the services
20 for which the following fees have been charged were actually and
21 necessarily performed." Haven Decl. (doc # 339-4) ¶ 4.
22

23 Plaintiff's speculative suggestion that the expense listed in
24 Item E "seem[s] unlikely" is inadequate reason to question an
25 attorney's sworn statement that it was necessarily incurred when
26 the costs themselves are reasonable on their face.
27

28 *Photography Charges:*

1 Plaintiff objects to certain claimed photography charges.
2 The costs of preparing photographs are allowable under § 1920.
3 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal
4 Practice and Procedure § 2677. Nevertheless, plaintiff objects
5 to the following photographic and other document-related costs
6 listed in Ron Haven's declaration:
7

8 K, L, R, U, EE, GG, LL, MM, PP, QQ, RR, TT, UU, VV, WW:
9 Plaintiff states that he is unaware of why the items were
10 reproduced and/or speculates that the costs involved were
11 unnecessary. Plaintiff's objections rest on an implicit demand
12 for greater detail about each cost item than the local rules
13 require Krause to provide.
14

15 W, Y: Plaintiff asserts that "there should not be a charge
16 for scanning and e mailing [sic] documents." The charges at
17 issue are for \$31.57 and \$55.09. Plaintiff provides no
18 authority for the proposition that the costs of electronic
19 document production are not recoverable.
20

21 S, XX: Plaintiff asserts that these costs - \$141.43 to
22 print the contents of a CD and \$3,840 to produce Dr. Quan's
23 trial exhibit boards - are excessive. Plaintiff's objection to
24 the \$141.43 printing charges is without merit. Although the
25 \$3,840 charge is high, Dr. Quan's testimony was central to the
26 defense and preparation of trial exhibit boards of several
27 thousand dollars was a reasonable method of illustrating his
28

1 testimony. Indeed, one can imagine that more expensive
2 animations might have been prepared.

3 *Depositions:*

4
5 Plaintiff objects to various deposition-related charges
6 detailed in Ron Haven's declaration in support of reimbursement
7 for deposition fees (doc # 339-2), as follows:

8 8(A): \$112.55 for documenting the nonappearance of Lindley
9 Manning at his deposition.

10 8(B): \$100.80 for documenting nonappearance of Russell
11 Darnell at his deposition.

12 8(C): \$4,950.42 for transcripts of Dr. Darnell's deposition

13 8(D): transcript and witness fees for Thomas Sartoris'
14 deposition.
15

16 8(E): costs associated with the second day of Dr. Balser's
17 deposition.
18

19 Plaintiff's objections to these cost items are not
20 persuasive.

21 Accordingly, the court GRANTS Krause \$22,621 in costs as
22 requested.
23

24 B. Objections to Home Depot's Costs

25 *Clerk's Fees:*

26 Plaintiff objects to paying \$180.00 for Sherry Rasmus's *pro*
27 *hac vice* application. *Pro hac vice* fees may be recoverable as
28

1 costs. Davis v. Puritan-Bennett Corp., 923 F.Supp. 179, 181 (D.
2 Kan. 1996).

3 *Docket Fees:*

4
5 Plaintiff objects to unspecified docket fees. It is
6 unclear which cost items this objection refers to. At any rate,
7 docket fees are recoverable under § 1920(5).

8 *Exemplification and Copying Charges:*

9
10 Plaintiff objects to various copying charges on grounds
11 that he does not know exactly what was copied and that "[i]t was
12 defendant's choice to enlarge and make boards of ordinary
13 documents; this should not be plaintiff's burden herein." As
14 discussed above, copying charges are recoverable, and Home Depot
15 has complied with LR 54-292.

16
17 *Deposition Transcripts:*

18
19 Plaintiff objects to paying costs associated with the
20 second, third and fourth days of Dr. Darnell's deposition. He
21 asserts that the deposition took so long because Home Depot's
22 attorney was unprepared. Home Depot counters that the
23 deposition was extended because Dr. Darnell was unprepared.
24 Plaintiff's submission does not persuade the court that the
25 multi-day deposition was the result of abusive discovery tactics
26 by defendant. This cost shall be awarded in full.

27 *Service of Process:*
28

1 Plaintiff objects to paying costs associated with serving
2 members of his family because "each of them would have been
3 willing to sit for a deposition without a subpoena or have
4 allowed Plaintiff's counsel to accept service on their behalf."
5 Home Depot responds that plaintiff never volunteered to make
6 these witnesses available, and that one member of plaintiff's
7 family failed to attend her deposition despite being subpoenaed.
8 Home Depot's decision to subpoena these witnesses was
9 reasonable.
10
11

12 Plaintiff's objections to Home Depot's costs are not
13 persuasive. Home Depot seeks a total of \$14,449.75, which is a
14 reasonable sum given the length and complexity of the trial.
15 Based on the sworn declarations of Home Depot's counsel, the
16 court is satisfied that each of the costs Home Depot requests
17 was necessarily incurred. Accordingly, the court GRANTS Home
18 Depot costs in the amount of \$14,449.75.
19

20 IT IS SO ORDERED.

21 Dated: April 9, 2007
22

23 /s/ David F. Levi
24 DAVID F. LEVI
25 United States District Judge
26
27
28